NAJAR SINGH v. GOVERNMENT OF MALAYSIA & ANOR.

[P.C. (Lord Wilberforce, Lord Morris of Borth-y-Gest, Viscount Dilhorne, Lord Hailsham of St. Marylebone and Lord Fraser of Tullybelton) March 8, 1976]

[Privy Council Appeal No. 7 of 1975]

Administrative Law — Dismissal of police officer — Proceedings taken under Public Officers (Conduct and Discipline General Orders Chapter D) Regulations, 1969 — Emergency legislation — Reasonable opportunity to be heard —No oral hearing given — Federal Constitution, arts. 132, 135(2), 140(1) and 150.

Constitutional Law — Federal Constitution arts. 132, 135(2), 140(1) and 150.

The appellant who was a police officer had been detained under an order issued by the Minister of Home Affairs. While he was being detained he received a letter from the Inspector-General of Police asking him to show cause why he should not be dismissed from the police force. The appellant sent a written reply. Eventually he was dismissed from the police force and he sought a declaration that his dismissal from the police force was void. Abdul Hamid J. dismissed his claim ([1973] 2 M.L.J. 181) and an appeal to the Federal Court was dismissed ([1974] 1 M.L.J. 138). The appellant appealed with leave of the Federal Court to the Yang Dipertuan Agung, and the appeal was referred to the Privy Council.

The grounds of appeal were (a) instead of being dealt with under the Public Officers (Conduct and Discipline) (General Orders Chapter D) Regulations, 1969 he should have been dealt with in accordance with the procedure prescribed in the Police (Conduct and Discipline) Junior Police Officers and Constables) Regulations, 1970; and (b) contrary to natural justice and regulation 27 of the Chapter D Regulations, he was not afforded a reasonable opportunity of being heard before he was dismissed.

Held, dismissing the appeal: (1) even if the appellant could have been dealt with under the Police Regulations 1970, that would not prevent his being dealt with under the Chapter D Regulations, 1969;

(2) Regulation 27 of the Chapter D Regulations is not to be interpreted as imposing an obligation to hear an officer orally;

(3) in the circumstances the plea by the appellant that there has been a failure of natural justice must be rejected.

Cases referred to:-

(1) *Local Government Board* v. *Arlidge* [1915] A.C. 120.

(2) *The King* v. *Housing Appeal Tribunal* [1920] 3 K.B. 334.

(3) *Malloch* v. *Aberdeen Corporation* [1971] 1 W.L.R. 1578.

PRIVY COUNCIL APPEAL FROM MALAYSIA.

Sir Dingle Foote Q.C. (*N. A. Marjoribanks, Lall Singh Mukher* and *K.S Nathan* with him) for the appellant.

D. Farquarson Q.C. (*Nicholas Lyell* and *Lim Beng Choon* (Federal Counsel) with him) for the respondent.

Viscount Dilhorne (delivering the judgment of the Board): The appellant who was at the time a junior police officer holding the rank of Sergeant Major, was on May 31, 1971 served with an order made by the Minister of Home Affairs under section 8(1)(a) of the Internal Security Act, 1960, for his detention for two years in a Special Detention Camp. His detention began on June 7, 1971 but did not continue for two years as he was unconditionally released on January 25, 1972.

While he was being detained, the Inspector General of Police sent him a letter dated July 5, 1971 asking him to show cause why he should not be dismissed from the Police Force. The appellant sent a reply forthwith. Their Lordships are ignorant of the reasons why the Inspector General wrote to him and of the contents of his reply as they were not disclosed in the Courts.

On August 18, 1971 the appellant was dismissed from the Police Force and just under a year later, on August 16, 1972, he started these proceedings in which he sought a declaration that his dismissal from the Police Force "purported to be effected by Police Services Commission" was void, and an order for payment to him of the pay, allowances and emoluments of a Sergeant Major from August 18, 1971.

Abdul Hamid J. dismissed his claim. He then appealed to the Federal Court of Malaysia and he now appeals with the leave of that court from their dismissal of his appeal.

The grounds on which he appeals may be summarised as follows:—

(1) Instead of being dealt with under the Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations, 1969 (hereafter referred to as "the Chapter D Regulations 1969"), he should have been dealt with in accordance with the procedure prescribed in the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations, 1970 (hereafter referred to as "the Police Regulations 1970"): and

(2) contrary to natural justice and Regulation 27 of the Chapter D Regulations 1969, he was not afforded a reasonable opportunity of being heard before he was dismissed.

The following provisions of the Constitution of Malaysia are relevant:—

"Article 132

(1) For the purposes of this Constitution, the public services are....

(d) the police force.

(2) Except as otherwise expressly provided by this Constitution, the qualifications for appointment and conditions of service of persons in the public service... may be regulated by federal law and, subject to the provisions of any such law, by the Yang Dipertuan Agung....

Article 135(2)

No member of such a service [the services listed in Article 132(1) other than the armed forces] shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard.

Article 140(1)

There shall be a Police Force Commission whose jurisdiction shall extend to all persons who are members of the police force and which, subject to the provisions of any existing law, shall be responsible for the... exercise of disciplinary control over members of the police force.

Article 150

(1) If the Yang Dipertuan Agung is satisfied that a grave emergency exists whereby the security or economic life of the Federation or of any part thereof is threatened, he may issue a Proclamation of Emergency.

(2) If a Proclamation of Emergency is issued when Parliament is not sitting, the Yang Dipertuan Agung shall summon Parliament as soon as may be practicable, and may, until both Houses of Parliament are sitting, promulgate ordinances having the force of law, if satisfied that immediate action is required.

....

(6) Subject to Clause 6A [which is not relevant] no provision of any ordinance promulgated under this Article ... shall be invalid on the ground of inconsistency with any provision of this Constitution."

In May 1969 the Yang Dipertuan Agung being satisfied that a grave emergency threatened the security of Malaysia, proclaimed an emergency. Parliament had been dissolved and the elections to a new Parliament had not been completed. On May 15, 1969 the Yang Dipertuan Agung promulgated the Emergency (Essential Powers) Ordinance No. 1, 1969, under which he was able to make any regulations he thought desirable for securing the public safety, the defence of Malaysia, the maintenance of public order and of supplies and services essential to the life of the community.

The next day, May 16, 1969, the Emergency (Essential Powers) Ordinance No. 2 was promulgated. Under it the executive authority of Malaysia and all the powers and authorities conferred on the Yang Dipertuan Agung by any written law were delegated to a Director of Operations who was designated by the Yang Dipertuan Agung.

In the exercise of the powers so delegated, the Director of Operations made the Chapter D Regulations 1969 and the Police Regulations 1970.

In the exercise of the powers given to him by Article 132(2) of the Constitution, the Yang Dipertuan Agung had made the Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations, 1968, (hereafter referred to as "the Chapter D Regulations 1968"). The Chapter D Regulations 1969 were modelled on those made in 1968 of which the first Regulation in Part I headed "Conduct" reads as follows:—

"1(a). This part sets out the rules which govern the conduct of officers in the Public Service. However, where the conduct and discipline of officers are also governed by another written law, the provisions in these General Orders shall apply subject to the provisions of such law."

It follows that if the conduct for which the appellant was dismissed was governed by the Police Regulations in force, he could not have been dealt with under the Chapter D Regulations 1968.

Regulation 1(a) of those Regulations was, however, omitted from the Chapter D Regulations 1969. It follows, in their Lordships' opinion, that the fact, if it be the fact that the appellant could have been dealt with under the Police Regulations was no bar to his being dealt with under the Chapter D Regulations 1969.

Those Police Regulations prescribed what has been aptly called in the Appellant's Case "Orderly Room Procedure" for dealing with disciplinary charges against junior police officers and constables. It provided that a charge should be "framed in accordance with the offence as prescribed in the Schedule" which lists 66 disciplinary offences, ranging from persuading a police officer to desert (No. 1) to "any neglect of duty, or any act, conduct, disorder or neglect to the prejudice of good order and discipline, not hereinbefore specified".

Regulation 3 of the Chapter D Regulations 1969 contains a code of conduct to be followed by officers in the public service, and states that a breach of the code would render an officer liable to disciplinary action under the regulations. The Chapter D Regulations 1968 also contained a code of conduct. The code in the 1969 Regulations ranges from the obligation to

"at all times and on all occasions give his undivided loyalty and devotion to the Yang Dipertuan Agung, the country and the Government,"

to the obligation not to

"conduct himself in such a manner as may be construed to be guilty of insubordination."

Their Lordships do not know if the appellant could have been dealt with under the Police Regulations 1970 but if he could have been, their Lordships agree with the Federal Court and Abdul Hamid J. that that would not prevent his being dealt with under the Chapter D Regulations 1969. In their opinion the appellant's first contention should be rejected.

Part II of the Chapter D Regulations 1969 is headed "Disciplinary Procedure" and Regulation 27, the first Regulation in this Part, is in the following terms:—

"27. In all disciplinary proceedings under this Part no officer shall be dismissed or reduced in rank unless he has been informed in writing of the grounds on which it is proposed to take action against him and has been afforded a reasonable opportunity of being heard."

Regulation 30 deals with the procedure to be followed in cases where dismissal or reduction in rank may be involved. So far as material it reads as follows:—

"30(1). Where it is represented to, or is found by, the appropriate Disciplinary Authority or the Director-General of Public Service that an officer is guilty of unsatisfactory work or misconduct and such work or misconduct, in the opinion of the Disciplinary Authority, merits dismissal or reduction in rank, the following provisions shall apply.

(2). The Disciplinary Authority shall after considering all the available information in its possession" [?if of the opinion] "that there is a *prima facie* case for dismissal or reduction in rank, cause to be sent to the officer a statement in writing, prepared, if necessary with the aid of the Legal Department, of the ground or grounds on which it is proposed to dismiss the officer or reduce him in rank and shall call upon him to state in writing" [sic: ? within] "a period of not less than fourteen days a representation containing grounds upon which he relies to exculpate himself.

....

(4). If the officer does not furnish any representation within the time fixed, or if he furnishes a representation which fails to exculpate himself to the satisfaction of the Disciplinary Authority, the Disciplinary Authority shall then proceed to consider and decide on the dismissal or reduction in rank of the officer."

Regulation 30(5) provides that if, after the accused officer has made representations, the Disciplinary Authority considers that the case against the officer requires further clarification, it may appoint a Committee of Inquiry and regulation 30(6) provides that the officer has to be given notice of the day on which the question of his dismissal or reduction in rank will come before the Committee and told that he will be allowed and, if the Committee so determine, required, to appear before it and exculpate himself. He has to be given the opportunity of being present when witnesses are examined and of putting questions to them (regulation 30(7)). The Committee has to report to the Disciplinary Authority which will act on its report (regulation 30(11)).

Breach of the code of conduct laid down in regulation 3 will clearly amount to misconduct coming within regulation 30(1).

The appellant does not complain that he was not informed in writing of the grounds on which his dismissal was to be considered. He does not complain of a breach of regulation 27 in that respect. His complaint is that he was not given an opportunity of being heard orally before being dismissed and he contends that regulation 27, which in this respect follows Article 135(2) of the Constitution, requires that before being dismissed he should have been given such an opportunity. He contends that "being heard" means "being heard orally".

The word "heard" does not invariably connote an oral hearing. It can be used and is not infrequently used in relation to something written. The question, "Have you heard from X", often means, "Have you had a letter from X?". Its meaning must depend on the context in which it is used and the context in which it is used in these regulations shows that in regulation 27 it cannot have been intended only to mean an oral hearing. Regulation 27 has to be read with regulation 30 and that makes no provision for an oral hearing if the officer fails to make representations in writing or the representations he makes in writing do not exculpate him. It is only if a Committee of Inquiry is appointed that he will be given the opportunity of giving oral evidence.

In their Lordships' opinion regulation 27 is not to be interpreted as imposing an obligation to hear an officer orally.

In a number of cases the argument has been put forward that the omission to hear a party orally was contrary to natural justice. In *Local Government Board* v. *Arlidge*[1] evidence had been given on behalf of Mr. Arlidge at a public inquiry but he claimed to be entitled to be heard orally by the Local Government Board to which he was appealing before they decided his appeal. The House decided that he was not so entitled, Viscount Haldane L.C. saying at page 134:

"I do not think the Board was bound to hear the respondent [Arlidge] orally, provided it gave him the opportunities he actually had."

In *The King* v. *Housing Appeal Tribunal*[2] the appeal tribunal, having received the appellant's notice of appeal and the local authority's statement in reply, dismissed the appeal. It was held that under the rules of procedure applicable, the appeal tribunal might dispense with an oral hearing but that they were bound to give the appellant a hearing in the sense of an opportunity of putting his case, Sankey J., as he then was, saying at page 346:

"Now a hearing in my view need not be an oral one, it may be on written representations."

In *Malloch* v. *Aberdeen Corporation*[3] *Lord* Wilberforce at page 1594 said:

"The appellant [a teacher] is entitled to complain if, whether in procedure or in substance, essential requirements, appropriate to his situation in the public service under the respondents, have not been observed, and, in case of non-observance, to come to the courts for redress.

The particular principle of administrative law to which he appeals is that, before his dismissal became effective, he ought to have been given an opportunity of making written representations to or of being heard by the education authority.... The appellant has first to show that his position was such that he had, in principle, a right to make representations before a decision against him was taken. But to show this is not necessarily enough, unless he can also show that if admitted to state his case he had a case of substance to make."

In this passage which was cited by counsel on behalf of the appellant, the context shows that the words "being heard" meant "being heard orally" but this passage is no support for the proposition that unless there is an oral hearing, there is a denial of natural justice. Indeed it points in the opposite direction. What is important is that the officer concerned should have a full opportunity of stating his case before he is dismissed. The Chapter D Regulations 1969 provided this and the appellant availed himself of the opportunity, though as the content of his representations was not disclosed, their Lordships are unable to say whether he presented a case of substance.

In the circumstances the plea by the appellant that there was a denial of nature justice must in their Lordships' opinion be rejected. As this plea was put forward, their Lordships have dealt with it though as the Regulations, which have the force by law, lay down a detailed procedure which was followed in this case, their Lordships do not consider that such a plea was really open to the appellant.

For these reasons their Lordships will advise the Yang Dipertuan Agung that the appeal be dismissed with costs.

Appeal dismissed.

Solicitors: *Bulcraig & Davies; Stephenson Harwood & Tatham.*